

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEANNETTE DOMINIQUE DAVIS,

Defendant-Appellant.

UNPUBLISHED

December 19, 2013

No. 312533

Kent Circuit Court

LC No. 12-002479-FC

Before: WHITBECK, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right her jury convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 20 to 35 years' imprisonment for her second-degree murder conviction and to two years' consecutive imprisonment for her felony-firearm conviction. Because we conclude that there was sufficient evidence for a rational jury to find defendant guilty beyond a reasonable doubt, we affirm.

Defendant and her brother, Jountay Zeamer Davis, were driving down Lafayette Avenue in downtown Grand Rapids when they were involved in a minor car accident with the victim, Lance Byers. Following the accident, Byers and Jountay immediately confronted one another, and a minor scuffle ensued. Defendant attempted to pull Jountay away from Byers, but as the altercation continued, defendant shot a gun and struck Byers with a bullet. After the gunshot, defendant and Jountay ran back to their vehicle and drove away. A nurse and police officer came to Byers' aid, but both were unsuccessful in their attempts to save him. Byers was later declared dead, his cause of death being a gunshot wound to the chest.

On appeal, defendant argues that the record lacks sufficient evidence to support her conviction of second-degree murder. We disagree.

We review sufficiency of the evidence issues de novo, examining the evidence in a light most favorable to the prosecution, to determine whether a rational trier of fact could have found that every essential element was proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). Further, this Court will not "interfere with the jury's role of determining the weight of the evidence or deciding the credibility of the witnesses," and "all conflicts in the evidence must be resolved in favor of the prosecution." *People v Fletcher*, 260 Mich App 531, 561-562; 679 NW2d 127 (2004).

The elements of second-degree murder are: “(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse.” *People v Reese*, 491 Mich 127, 143; 815 NW2d 85 (2012).

The first two elements are not in dispute, and there is sufficient evidence to show that defendant’s act caused a death. An expert pathologist testified that Byers’ cause of death was a gunshot wound to the chest, and the evidence shows that defendant admitted to shooting the gun.

Next, “[m]alice is defined as intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). The jury can infer malice from direct or circumstantial evidence. *People v Nowack*, 462 Mich 392, 401-402; 614 NW2d 78 (2000). Malice can be inferred when a defendant intentionally sets in motion “a force likely to cause death or great bodily harm.” *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999) (quotation and citation omitted). Finally, “malice is a permissible inference that may be drawn by the jury” when a defendant uses a deadly weapon. *Fletcher*, 260 Mich App at 562.

We conclude that sufficient evidence exists in the record to show that defendant acted with malice. A witness testified that defendant pointed and shot her gun at Byers from approximately 2 to 2-1/2 feet. The act of pointing and shooting a gun at Byers could constitute intent to kill or intent to cause great bodily harm. See *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). Further, the jury could infer malice from defendant’s use of a gun, which is a deadly weapon. *Fletcher*, 260 Mich App at 562.

Defendant argues, however, that she lacked malice because she only shot the gun in the general direction of Jountay and Byers to stop the altercation. She argues that she did not shoot at Byers in particular. Nonetheless, the jury could still infer defendant intended to do an act “in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Goecke*, 457 Mich at 464. Defendant took and disregarded the risk that firing a gun in the general direction of Byers and Jountay would result in the hitting of one of them, causing death or great bodily harm. *Id.* Therefore, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that defendant acted with malice.

Further, we conclude that sufficient evidence exists in the record to show that defendant acted without justification. The use of deadly force in defense of another is justified when the acting individual (1) is not “engaged in the commission of a crime at the time he or she uses deadly force,” and (2) honestly and reasonably believed that the use of deadly force was necessary to prevent the imminent death of or imminent great bodily harm to another individual. MCL 780.972.

In this case, there was conflicting evidence regarding the extent of the altercation between Jountay and Byers, but witness testimony indicates that Byers and Jountay were similar in size, and the altercation between the two did not escalate to a serious level. Most witnesses testified to the presence of minor pushing and shoving. Further, a witness testified that Jountay appeared to be without any physical injury shortly after the altercation. Additionally, the

pathologist testified it was possible that Byers was facing away from defendant when defendant shot him. From this, the jury could infer that Byers was walking back to his car when defendant shot him. As a result, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that defendant acted without justification because her actions did not satisfy the requirements under MCL 780.972.

Finally, defendant notes that she was not involved in the altercation, she only shot the gun once, and she shot the gun near a hospital facility. These facts are not pertinent on appeal. Defendant is asking this Court to view the evidence in the light most favorable to her; however, “all conflicts in the evidence must be resolved in favor of the prosecution.” *Fletcher*, 260 Mich App at 562.

Accordingly, we hold that sufficient evidence existed to convict defendant of second-degree murder.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher